

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-185494

DATE: January 27, 1976

MATTER OF: C. J. O'Neil Company

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In mistake in bid case where subsequent to award of contract the contracting officer states that there was a bona fide mistake in the bid of the contractor, that he should have known of the mistake before the award, and there is no doubt as to the intended bid, the contract may be canceled as administratively recommended.

The General Services Administration (GSA) has requested our decision whether the facts and circumstances surrounding the submission of an offer and award of a contract for vehicle repair services are sufficient to establish constructive notice to the contracting officer of the probable occurrence of a mistake in the submission and to allow the contract to be partially canceled as administratively recommended.

The mistake is alleged by C. J. O'Neil Company (O'Neil) after award of contract No. GS-10W-65218 to furnish mechanical repairs, glass, and installation of glass on various types of Government vehicles. Solicitation No. GS-10W-50027 invited bids for the above-mentioned contract and divided the work to be done into three groups. Groups I and II were for vehicle repairs and maintenance while Group III was merely for the furnishing and installation of glass to the vehicles. O'Neil was awarded the contract for the entire package.

In her Determination and Findings, the contracting officer reports that she was contacted by telephone after the award by one of the nonresponsive bidders and advised that O'Neil was engaged only in the business of furnishing and installing glass. Subsequent telephone conversations with O'Neil confirmed that fact and led to its September 29, 1975 request to be released from the Groups I and II repair portions of the contract. It appears from the Determination and Findings that O'Neil was under the impression the contract was for glass work only. O'Neil was not alone in this impression, as another bidder who performed just glass work also bid on all three groups of the contract.

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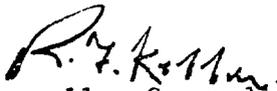
That mistaken bid, however, was discovered before award and the bidder was permitted to withdraw its bid.

Pursuant to Paragraph 11 of the solicitation, the contractor was required to have available the requisite equipment to perform all contractual functions. It was also stipulated in Paragraph 20a of the IFB that there would be preaward inspections of the bidders to determine if such equipment was in fact available. However, because of the remoteness of Coos Bay, Oregon, where O'Neil's facilities are located, and the fact that O'Neil had previously performed glass work contracts, no such inspection took place. Instead, a telephone check with the GSA Motorpool in the Coos Bay area confirmed satisfactory past performance. Neither the contracting officer nor the manager of the motorpool (who alone was familiar with O'Neil's prior experience) mentioned the fact that O'Neil's previous contract had been for glasswork only, despite the fact that the contract awarded was for repair and glasswork.

The contracting officer has concluded that the evidence is clear and convincing that O'Neil did not intend to bid on auto repair work. It also seems clear that had the requisite inspection pursuant to Paragraph 20a of the solicitation taken place, the mistake would have been discovered before the award. At the very least, had the telephone conversation with the area GSA Motorpool Manager been more extensive, the mistake would then have been discovered.

This Office will grant appropriate relief, including cancellation of a contract, where a mistake has been alleged subsequent to the contract award, if the contracting officer was on actual or constructive notice of the error prior to award. Ubique Ltd., B-180610, August 12, 1974, 74-2 CPD 90; General Services Administration Request for Decision, B-182721, March 5, 1975, 75-1 CPD 132; B-178605, May 25, 1973. According to the present record, these prerequisites are established.

Accordingly, the contract with O'Neil for performance of the Group I and Group II repair work may be canceled without liability to O'Neil, as administratively recommended.


Deputy Comptroller General
of the United States.